

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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AUSTIN COMMUNITY COLLEGE DISTRICT,

Plaintiff,

24-CV-603 (CM) (VF)

-against-

ORDER

XL INSURANCE AMERICA, INC.,

Defendant.

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VALERIE FIGUEREDO, United States Magistrate Judge

In a joint letter dated November 21, 2024, the parties raised a discovery dispute concerning Defendant's response to Plaintiff's RFP Nos. 12 & 13. See ECF No. 23. The Court held a conference on November 15, 2023, to address that dispute.

As discussed at the conference, Defendant will search for and produce claim denial letters (from the relevant time period) for which the basis for the claim denial was the "Temperature Exclusion" and/or "Course of Construction" provisions in the policy agreement. Additionally, Defendant will identify for Plaintiff any litigation involving Defendant where the dispute concerned the application or interpretation of the "Temperature Exclusion" and/or "Course of Construction" provisions in a policy agreement.

Finally, the parties will work together to determine what documents Defendant can reasonably produce concerning coverage to an insured where the claim involved application of the "Temperature Exclusion" and/or "Course of Construction" provisions in the policy agreement. If by **January 9, 2025**, the parties have not reached a resolution on that specific issue, the parties should send the Court a joint letter informing the Court of the status of the dispute. If the parties are unable to reach a resolution based on Defendant's claim of undue burden, Defendant's counsel should be prepared to provide the Court with an affidavit from an

individual at Defendant, explaining precisely why it would be unduly burdensome to search for and produce documents related to those two contractual provisions in circumstances where coverage was provided to an insured.

SO ORDERED.

DATED: New York, New York
November 25, 2024



VALERIE FIGUEREDO
United States Magistrate Judge